

DEVELOPING A SUCCESSFUL MINORITY COUNSEL PROGRAM

COMMISSION ON OPPORTUNITIES FOR
MINORITIES IN THE PROFESSION
Rachel Patrick
Staff Director
American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5638



AMERICAN BAR ASSOCIATION

CHAIRPERSON
Justice Dennis W. Archer
Michigan Supreme Court
1425 Lafayette Building
Detroit, MI 48226
313/256-9145

MEMBERS
Frederick Abramson
1140 Connecticut Ave. N.W.
Suite 900
Washington, DC 20036
202/828-8200
Mari Carmen Aponte
1011 14th Street, N.W.
Suite 610
Washington, DC 20005
202/371-1555
Judge Benjamin Aranda
Municipal Court
South Bay Judicial District
825 Maple Ave.
Torrance, CA 90501
213/533-6536
Thomas J. Barr
One Chase Manhattan Plaza
58th Floor
New York, NY 10005
212/422-1000
Alan D. Felder
First City Center
41st Floor
Dallas, TX 75201
214/969-2712
Robert J. Grey, Jr.
1111 E. Main St.
23rd Floor
Richmond, VA 23208
804/697-1329
Richard B. Groothuis
151 Farmington Ave.
Suite A416
Hartford, CT 06156
203/275-3573

Thomas Z. Hayward
3 First National Plaza
70 W. Monroe
Suite 3200
Chicago, IL 60602
312/372-1121
Justice Harry Low
Court of Appeal
350 McAllister St.
#4200
San Francisco, CA 94102
415/557-0717
Dean Norman Redlich
New York University Law School
40 Washington Square South
New York, NY 10012
212/998-6000
Chesterfield Smith
P. O. Box 015441
Miami, FL 33101
305/374-8500
Judge Thomas Tang
U. S. Courthouse
230 N. First
Room 6412
Phoenix, AZ 85025
602/261-4055
Kaye Webb
P.O.Box 629
Raleigh, NC 27602
919/733-7187
Walter White
250 E. Wisconsin Ave.
Milwaukee, WI 53202
414/271-6560

Commission on
Opportunities for
Minorities in the
Profession
750 North Lake Shore Drive
Chicago, Illinois 60611
312/988-5638
ABA/net: ABA469

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Introduction

The American Bar Association has enacted a ninth goal, which reads as follows:

"Goal 9: To Promote Full and Equal Participation in the Profession by Minorities and Women."

The ABA Commission on Opportunities for Minorities in the Profession was created to pursue, among its primary objectives:

"increasing minority hiring, retention and promotion opportunities."

At present, by far the overwhelming number of minority lawyers are individual practitioners or are members of minority law firms that have not yet been afforded full opportunities in the profession. In addition, those few who are in majority law firms often have not had the opportunity to realize their full potential. Those entities which have ongoing programs to promote full and fair opportunities for minorities to participate should continue. Ultimately, we can and must achieve the full integration of minority lawyers in the mainstream of the diverse legal profession.

Several corporations¹ and governmental bodies² have established successful minority counsel programs. Their

¹Corporations such as Aetna Life & Casualty, Chrysler, Clorox, Ford Motor Company, General Motors, Philip Morris, Prudential and Travelers have been increasing their use of minority outside counsel; in some instances formal programs have been developed.

(Footnote Continued)

BOARD OF GOVERNORS LIAISON
Llewelyn G. Pritchard
1111 Third Ave.
Suite 2500
Seattle, WA 98101
206/223-1313
STAFF DIRECTOR
Rachel Patrick
312/988-5638
ABA/net: ABA469

ASSISTANT STAFF DIRECTOR
Alpha M. Brady
312/988-5667

ADMINISTRATIVE ASSISTANT
Doris R. Manning
312/988-5643

experiences can serve as examples for others to learn from and build upon. Program formats vary considerably, and there is no single formula for success. Some of the most promising program concepts to date include the increased utilization of minority firms and of minority lawyers in majority firms; joint ventures between majority and minority firms; and procedures for acclimating new attorneys in the client's business, such as by temporary assignments for rotations of minority firm lawyers to corporate law departments.

If thoughtful programs are more widely implemented, the following can be accomplished:

1. Expand business opportunities for minority law firms.
2. Advance the hiring and use of minority lawyers within majority law firms.
3. Foster joint ventures between majority law firms and minority law firms.
4. Provide information and assistance to interested corporations, governmental entities and majority law firms to enable them to develop their own creative models.

Difficulties Encountered
by Minorities in the Profession

The growth opportunities for minority law firms have been limited. In developing their practice, minority lawyers have encountered problems as a result of past patterns of exclusion from the profession and from positions of responsibility in client organizations. Minorities also encounter more subtle problems arising from cultural diversity. For minority lawyers to overcome these disadvantages and build their practice, corporations and governmental entities must make conscious efforts to assure minorities a full and fair opportunity to compete for legal business.

(Footnote Continued)

²The term "governmental bodies" includes agencies and units that engage or retain outside legal firms.

³A minority firm is defined as one where 51 percent ownership of profits or voting control resides with minorities.

Minority lawyers in majority law firms also confront problems. They seek equal involvement in the firm's client development and the opportunity to meet and work with the firm's corporate and governmental clients. Greater access to such clients will enhance the client maintenance and client development roles of these minority lawyers. The result could be a significant increase in the number of minority lawyers who stay and ultimately become partners instead of prematurely leaving the law firm to seek other career opportunities.

It is critical that corporations and governmental entities receive information regarding the expertise, skill, reputation and accomplishments of minority law firms and lawyers, so that these firms and lawyers will have a full opportunity to compete for the legal business of these entities.

Reasons for Corporations, Government Offices and Majority Law Firms to Adopt Programs for Increasing Opportunities for Minorities in the Profession

1. There are sound business reasons for corporations, government and majority law firms to use more lawyers drawn from the pool of minority lawyers:
 - a. Business consumers and constituents of governments are increasingly expecting the utilization of minorities and minority businesses by corporations and governmental entities. These expectations apply with equal force to the utilization of minority lawyers and the retention of minority law firms.
 - b. Governmental units and corporate law departments have increasing numbers of minorities who have attained important managerial positions.
 - c. Corporations are experiencing increased diversity within their employee ranks. It will enhance employee relations to increase the use of minority vendors, including minority law firms and lawyers.
2. Corporations which are federal contractors may include legal fees paid to minority owned firms in amounts reported to the government as a part of their overall minority purchasing programs.

3. Traditionally, minority law firms have been major employers of minority lawyers and other legal support staff. The development of business for minority owned firms will increase employment opportunities within the minority community.
4. The growing interdependence of countries and corporations engaged in international trade and commerce calls for a fuller utilization of diverse legal talent, particularly regarding interaction with Latin America, Asia and Africa.
5. The increase of minorities in the profession will have far reaching consequences in advancing goals of affirmative action given the role successful attorneys have historically played in corporate and governmental circles. Successful minority lawyers will leave their mark and be strong role models.

Mission and Objectives of the Program

The program's mission is to improve the opportunities for minorities practicing law. More specifically, the program has these objectives:

1. To retain minority law firms and lawyers to do more of the legal work of corporations and governmental entities than they have done in the past.
2. To encourage majority firms to hire minority lawyers and to assign⁴ minority lawyers to significant projects.
3. To encourage and enhance joint ventures between majority and minority law firms.

⁴This is not intended to interfere with the autonomy of law firms. Lawyer assignments should be a firm's to make based on its assessment of the best interests of the firm and its clients. However, client policies and goals are clearly very important considerations in the assignment of personnel.

⁵An example of such an arrangement might consist of a majority firm, acting as lead counsel in a transaction, retaining a minority firm to handle certain aspects of the transaction or completing tasks in another jurisdiction, or
(Footnote Continued)

4. To provide information and technical assistance to corporations and governmental entities which desire to develop business relationships with minority lawyers.

It is worth emphasizing what the program is not. It is not a proposal for measuring the performance of minority firms and attorneys by standards different from those by which majority firms and attorneys are evaluated. It is understood that considerations of quality and cost should govern the outcome of competition in our profession, for majority and minority firms alike. What minorities seek and deserve is a full and fair opportunity to compete.

One Model Approach

These objectives can be accomplished in various ways. Corporations and government offices will want to preserve flexibility to adopt approaches best suited to their individual circumstances. A useful model to offer as an example of what can be done in this area is the successful⁶ and evolving program developed by AEtna Life & Casualty. After potential law firms are identified, corporate attorneys visit the firms and check references. When satisfied with the quality and caliber of the firms, an attempt is made to match the law firms with potential "users" within the corporation. Generally, law firms are tested for a period of time with cases of a less complex nature or involving relatively small sums of money. Periodic evaluations are conducted to ensure the program is working smoothly. Law firms which are not meeting required standards of performance are offered assistance where feasible. Ultimately, if standards cannot be met, the firm is dropped from the program.

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vice versa, consistent with concepts of cost effectiveness. The exposure to the total transaction would develop the minority firm's capacity for greater involvement in future assignments.

⁶ The AEtna Life & Casualty Minority Outside Counsel Program is a voluntary outgrowth of AEtna's commitment to affirmative action. It is an initiative in which the company has been involved since the early 70s, but more consistently since 1978. AEtna's Minority Outside Counsel Program has resulted in the corporation establishing a business relationship with approximately 15 minority law firms around the country.

This program has been expanded to include joint ventures (as explained in footnote 5) and a temporary assignment or rotation program which involves attorneys from minority firms spending a number of months in their Law Department. These temporary assignments are designed to create a better appreciation by outside counsel of the corporation's practices, personnel, negotiating style and transaction objectives, as well as an in-depth exposure to substantive skills necessary for the given practice. It also solidifies the bond between the corporation and its outside counsel.

Another important aspect of this program is its request that minority lawyers in majority law firms be assigned to legal projects assigned by AEtna to the firm. Over time, the minority lawyers in the firms who are sought for client work should achieve greater success than previously attained because these minority lawyers should be able to generate more billings, gain important clients and be more willing to stay with the firm since the prospects for partnership are dramatically increased. AEtna makes it clear that it is seeking quality work, but is willing to commit greater training time (if necessary) to enable a minority lawyer to overcome any lack of familiarity with the subject matter or the client's business and personnel. This concept has been discussed with a number of firms with whom AEtna does business and has received a uniformly positive response to date.

Demonstration Program

The American Bar Association Commission on Opportunities for Minorities in the Profession (the "Commission") is proposing a very focused Demonstration Program involving a limited number of participants to commence in May 1988. Three to six corporations will participate, along with approximately 20 minority firms and four to six majority firms.

The corporations would make a commitment to utilize most or all the firms within this group of 20 throughout a one-year period where appropriate opportunities arise. At the outset, each corporation would choose three to five minority firms based on projections of work to be available in the near future. There would be a special effort by the corporations to utilize these three to five law firms from the start of the Pilot Program. The corporations would also request majority firms to assign minority lawyers to work on legal projects assigned by the corporations to the firm.

The minority law firms would be selected based on broad ranging criteria. Considerations would include firm

size, years in existence, experience level (in terms of substantive skills, areas of specialization and prior corporate clientele) and the need for geographic diversity to accommodate corporate requirements.

The majority firms would be selected based on commitment to the program and existing relationships with the participating corporations. Law firms will be encouraged to expand their hiring and promotional opportunities for minority lawyers as corporate clients seek greater exposure and contacts with more diverse segments of our society. The majority firms would commit to making special efforts to assign minorities to work on legal projects of corporate clients so requesting. In addition, the firms would explore special relationships with the minority firms. These would include joint ventures, referral of conflict cases and sharing in educational programs.

The Commission would be responsible for providing program support and resources to participants. These would include training programs, goal setting and evaluation methods in connection with the program.

**GUIDELINES FOR DEMONSTRATING
THE ACHIEVEMENTS OF PARTICIPATING
CORPORATIONS AND MAJORITY LAW FIRMS
IN THE MINORITY COUNSEL DEMONSTRATION PROGRAM**

I. **MISSION:**

- 1) To demonstrate the various approaches adopted by corporate participants for expanding business opportunities for minority law firms and creating long-term relationships between minority law firms and corporate clients.
- 2) To demonstrate measures majority law firms and their corporate clients can adopt to advance the hiring and use of minority lawyers within majority law firms.
- 3) To demonstrate the feasibility of information exchanges and collaborative efforts, such as "joint venturing," between majority and minority law firms.
- 4) To provide information and assistance to interested corporations, governmental entities, and majority law firms to develop ways to expand opportunities for minorities in the legal profession.

II. **ACCOMPLISHING THE MISSION**

The program participants will have varying ideas, including some programs already in place, for utilizing minority attorneys in the service of large corporate clients. As the Demonstration Program proceeds, the program participants will exchange appropriate information about their various approaches with one another and, eventually, with a broader audience. This will require consideration of at least two issues:

- 1) What are appropriate audiences for the Demonstration Program?
- 2) What types of data should be gathered during the course of the Demonstration Program to assure that the appropriate audiences receive useful information.

A. The Appropriate Audience

The following groups would benefit from the information gathered during the program. It may be useful to contact these audiences at the outset of the Demonstration Program and at appropriate intervals during the progress of the program. At the very least, these audiences should receive a report at the conclusion of the program:

- Corporate Counsel Division of the ABA's General Practice Section
- Corporate Counsel Committee of the ABA's Corporation, Banking, and Business Law Section
- ABA's Commission on Women in the Legal Profession
- Minority Bar Associations, such as the National Bar Association, Hispanic National Bar Association, Asian American Bars, American Indian Bar Association
- State and local bar associations
- Federal Bar Associations
- American Corporate Counsel Association
- Opportunities Industrialization Centers of America
- The General Counsel of the corporations represented on the boards of directors of the corporate participants in the Demonstration Program.

B. Necessary Data

All data submitted by corporate participants will be treated in strict confidence. Participants will not be separately identified when information about the results of the Demonstration Program are shared with any audience, unless a participant requests or agrees to be separately identified. The data will be gathered and compiled by the staff of the Commission, which will operate under instructions to preserve the confidentiality of all submitted data and to report on the progress of the Demonstration Program in aggregate form or in such other manner as may be appropriate to preserve the confidentiality of each participant's data.

- (1) Each participant is encouraged to prepare a description of institutional approaches it may have adopted for accomplishing the objective of assuring that minority attorneys are brought more fully into the mainstream of the legal profession. In the case of corporate participants, this could include, for example, a description of in-house measures developed for assuring that minority law firms are given a fair opportunity to compete for the corporation's legal business. In the case of

majority firms, a description of its in-house efforts to bring minority firms into contact with large corporate clients would be appropriate.

- (2) Interim reports during the course of the program will be appropriate. Participants are encouraged to use the attached forms to supply the reports, and to submit completed forms to the staff of the Commission on a quarterly basis, with the first report submitted by August 15, 1988. Participants are encouraged to supplement their reports with information about the details and highlights of particular matters. It is expected that "war stories" will be a valuable part of the information gathered during the course of the program. There is, of course, nothing compulsory about the submission of any category of data suggested in the attached forms, so the participants should feel free to omit any data they might feel uncomfortable providing and to add information they feel would be useful. Moreover, as stated above, all data will be treated in the strictest of confidence.
- (3) It is expected that each corporate participant would use (if it is not already using), from three to five of the 20 minority firms participating in the program. However, it is not intended that the participants utilize only these 20 minority firms to the exclusion of other minority firms. To the contrary, the Commission requests that information regarding experience with minority firms other than the 20 in the program also be reported, as this information will also be valuable for the goals of the Demonstration Program.

It should be remembered that the size of the Demonstration Program has been limited only to facilitate the management of the program, given the limited resources of the Commission. No participant should feel constrained by these limitations. We hope and expect that the corporate and majority firm participants will have occasion during the course of the program to use additional minority law firms, and the Commission stands ready to assist participants who may want to share this broader experience with any of the audiences designated in Section A, above.

DRAFT

QUESTIONS AND ANSWERS

Will the Program work?

Comment: It has worked.

This is an outgrowth and expansion of programs which have been successfully in existence for a number of years.

Who is a minority? What is a minority firm? What is a majority firm?

Comment: For purposes of the Program, minorities are Black lawyers, Hispanic Lawyers, Native American Indian lawyers and Asian-American lawyers.

A minority law firm is one in which a majority of the partner/owners or those in control are minority lawyers.

A majority law firm is one in which a majority of the partner/owners or those in control are not minorities.

Why doesn't the Program deal with opportunities for women lawyers?

Comment: A separate ABA Commission is focusing on opportunities for women in the profession.

What is the attitude of other bar associations to the ABA Demonstration Program?

Comment: The American Corporate Counsel Association, representing over 3,000 corporations has endorsed the Program and a number of state and local bar groups are reviewing the program for local application.

What is the duration of the Demonstration Program?

Comment: The planned demonstration period is one year. We are beginning to plan a national conference, probably in Washington D.C., in May of next year to share the results of the Program with institutional clients and majority and minority law firms.

Why should a majority firm steer business to a minority associate? Won't that create problems with majority associates? Will program decrease opportunities for minorities in majority firms?

Comment: Any assignment should make business sense for the firm and be appropriate for the associate involved.

The Program is intended to sensitize corporate and other clients and the firms involved to providing full opportunities to minorities to work on client matters.

At the most junior levels, this may mean asking a minority associate in the litigation area to work on a financing matter and vice versa.

The Program intends to make it clear to firms that clients value making minorities in majority firms feel accepted and welcomed to work on the client's business.

Corporations will have an interest in providing legal work for minority law firms and for minorities in majority firms. There is always the possibility that on a given matter, a minority firm in a given city will be assigned work that otherwise would have gone to a minority lawyer in a majority firm and vice versa.

The overall objective and goal will be to increase the amount of legal work done by minority lawyers wherever located. This will best be achieved by increasing the volume of work going to minority lawyers in minority firms as well as in majority firms. The program is focused more on increasing the "pie" for minority rather than on how it is divided.

Will corporate participants stop using minority firms who are not in the program?

Comment: The Program is intended to expand the number of minorities receiving legal work.

Any client using minority firms is encouraged to continue to use minority firms currently utilized.

The Commission will create a resume bank for minority firms (whether or not in the Demonstration Program) and make this information available on request to any corporation or governmental entity seeking it.

How can majority firms implement the Program?

Comment: In addition to assigning work to minority members of the firm, the firm can joint venture legal work with minority firms. This can occur, for example, where the majority firm needs to retain a local firm to handle litigation or investment work.

Other steps would be to invite minority firm members to participate in the firm's inhouse training programs and to refer conflict cases to minority firms.

Will the Demonstration Program be limited to providing work to the minority firms taking part in the Program?

Comment: The Commission will maintain a listing of all minority firms who contact the Commission. Any corporation, other client or majority firm will be able to obtain a list of minority firms in given geographic areas from the Commission.

Is participation in the Program an admission of "guilt" that corporations or majority firms haven't done enough for minorities?

Comment: Several of the participants have established programs and are nationally recognized as leaders in this area.

No company, governmental body, law department or outside counsel is where it would like to be in terms of fully assisting and giving full opportunities for business and success to minorities.

The commitment, represented by participation in the Program, to further progress of minorities in the profession is shared by all those in the Program.

Unless Corporate America makes continuing and innovative efforts to change the past, the future will reflect the past.

Participation in the Program is a statement of commitment to taking those meaningful steps necessary to implement ABA's Goal 9.

Will the Program raise expectations that can not be satisfied?

Comment: The Program is an outgrowth of existing Minority Counsel programs which have been successful in expanding opportunities for minority lawyers.

Corporations have identified minority firms and assigned litigation and investment work to them. Majority firms have assigned corporate work to minority associates with or without client prodding. Joint ventures between majority and minority firms have taken place in municipal bond and other work.

Minority firms should understand that the ABA Program is not a set aside program. It is an opportunity to develop new clients; client development takes time and not all client development efforts are successful.

Will Quality and Cost Control be a problem?

Comment: These concerns exist in any legal work. Companies with minority counsel programs have applied the same communication and other review techniques they apply for other referred legal work. Many of the participating minority firms have prior corporate work experience.

Could this program conflict with other priorities such as doing more work within inside law departments, not referring work to local counsel, limiting the number of outside counsel used?

Comment: This is an issue of establishing priorities.

Most corporations have a significant amount of legal business which will be sent to outside counsel in any case. The same is true for assigning minorities within majority law firms to specific work or referring matters to specific local counsel. The real question is how to allocate assignments, depending on a determination of priorities.

Bear in mind, the program is designed to give full opportunities to minorities. It is not intended to provide unfair opportunities - only a fair share of legal work they have not previously been able to obtain.

What type of statistics and report will the Commission produce at the end of the Demonstration Program?

Comment: All statistics will be confidential as to work assigned or undertaken by individual participants.

The Commission will produce aggregate statistics of matters assigned and handled by all participants and as to other accomplishments of the Program. We plan to keep statistics on the number of matters referred by and to Program participants as well as the fees generated by those referrals.

Can other corporations or law firms become members of the Program?

Comment: The Commission encourages all corporation, other clients and majority firms to follow the guidelines and pursue the goals of the Demonstration Program.

Logistically, there will be limits as to the numbers of participants the Commission can coordinate and manage for an effective demonstration project.

Depending on the number of Corporation Participants, the Commission will consider expanding law firm participants. The Commission will also seek to determine the best manner of expanding and extending the objectives of the Demonstration Program.

How will statistics be kept for the Demonstration Program?

Comment: These will be aggregated by the Commission on a confidential basis from data supplied by participants. In addition to numerical progress, anecdotes of imaginative developments to reach the goals of the program will be encouraged.

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-- MINORITY COUNSEL DEMONSTRATION PROGRAM --

CORPORATION REPORT OF MINORITY
FIRM TRANSACTIONS

NAME OF CORPORATION _____

DATE _____

<u>NAMES OF MINORITY FIRMS</u> (Note: If the firm is not one of the 20 originally designated participants, give firm's address and the nature of the firm's minority status e.g., Hispanic, Black, Asian, Native American.)	<u>TYPES OF MATTERS</u> Include information on complexity of matters, verdict potential (or other measure of the importance of a satisfactory outcome.)	<u>"WAR STORIES"</u> (Re Firm's Contributions)	<u>AGGREGATE FEES PAID IN REPORTING PERIOD</u>
OTHER COMMENTS			

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-- MINORITY COUNSEL DEMONSTRATION PROGRAM --

MAJORITY LAW FIRM REPORT OF MINORITY
FIRM TRANSACTIONS

NAME OF MAJORITY FIRM _____ DATE _____

<u>NAMES OF MINORITY FIRMS</u>	<u>TYPES OF MATTERS/REFERRALS</u>	<u>INITIAL SOURCE OF REQUESTING REFERRAL, I.E., WAS THE REFERRAL GENERATED INTERNALLY OR THROUGH CLIENT</u>

OTHER COMMENTS: _____

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MINORITY COUNSEL DEMONSTRATION PROGRAM
MINORITY FIRM REPORT OF TRANSACTIONS

NAME OF MINORITY FIRM _____

DATE _____

PERIOD COVERED BY REPORT _____

NAME OF CORPORATION/ REFERRAL SOURCE	NATURE OF ASSIGNMENT OR CONTRACT	FEES PAID/ HRS ACCRUED TO DATE	NEW OR EXISTING CLIENT	STATUS OR DISPOSITION OF ASSIGNMENT	MISCELLANEOUS

OTHER COMMENTS: